

Gregg M. Galardi, Esq.
Ian S. Fredericks, Esq.
SKADDEN, ARPS, SLATE, MEAGHER & FLOM,
LLP
One Rodney Square
PO Box 636
Wilmington, Delaware 19899-0636
(302) 651-3000

Dion W. Hayes (VSB No. 34304)
Douglas M. Foley (VSB No. 34364)
MCGUIREWOODS LLP
One James Center
901 E. Cary Street
Richmond, Virginia 23219
(804) 775-1000

- and -

Chris L. Dickerson, Esq.
SKADDEN, ARPS, SLATE, MEAGHER & FLOM,
LLP
333 West Wacker Drive
Chicago, Illinois 60606
(312) 407-0700

*Counsel to the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

| | | |
|----------------------------|---|----------------------|
| In re: |) | Chapter 11 |
| |) | |
| CIRCUIT CITY STORES, INC., |) | Case No. 08-35653 |
| <u>et al.</u> , |) | |
| |) | |
| |) | Jointly Administered |
| Debtors. |) | |
| |) | |

MOTION TO FILE CERTAIN DOCUMENTS UNDER SEAL

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors")¹ hereby move

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), Prahs, Inc. (n/a), XSStuff, LLC

(the "Motion") for entry of an order substantially in the form of Exhibit A hereto, pursuant to sections 107(b)(1) of title 11 of the United States Code (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Debtors to file certain documents under seal. In support of the Motion, the Debtors respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

3. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the

(9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address is 9950 Mayland Drive, Richmond, Virginia 23233.

"Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

4. The statutory predicates for the relief requested herein are section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018.

BACKGROUND

5. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Declaration of Bruce H. Besanko, Executive Vice President and Chief Financial Officer of Circuit City Stores, Inc., in Support of Chapter 11 Petitions and First Day Pleadings, filed concurrently herewith and fully incorporated herein by reference.

6. On November 10, 2008 (the "Petition Date") the Debtors' filed their Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 and Federal Rules of Bankruptcy Procedure 2002 and 4001 (I) Authorizing Debtors (A) to Obtain Postpetition Financing and (B) to Utilize Cash Collateral; (II) Granting Adequate Protection; and (III) Scheduling Interim and Final Hearings (the "DIP Motion"). In the DIP Motion, certain of the

Debtors² and InterTran as borrowers (collectively, the "Borrowers"), request authority to, among other things, obtain postpetition financing consisting of a \$1.1 billion senior revolving credit facility from certain lenders (collectively, the "DIP Lenders"), including Bank of America, N.A. ("Bank of America") and General Electric Capital Corporation ("GECC"), with Bank of America as administrative agent.

7. On December 9, 2008 this Court entered the Corrected Interim Order Pursuant to 11 U.S.C. Sections 105, 361, 362, 363 and 364 and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (1) Authorizing Incurrence by the Debtors of Post-Petition Secured Indebtedness with Priority Over all Secured Indebtedness and with Administrative Superpriority, (2) Granting Liens, (3) Authorizing Use of Cash Collateral by the Debtors Pursuant to 11 U.S.C. Section 363 and Providing for Adequate Protection, (4) Modifying the Automatic Stay and (5) Scheduling a Final Hearing (the "Interim Order").

8. Since entry of the Interim Order the Debtors have been in negotiations with the DIP Lenders, and various

² The Debtor borrowers are Circuit City Stores, Inc., Circuit City Stores West Coast, Inc., and Circuit City Stores PR, LLC.

parties that have filed objections to the Interim Order, and the Creditors' Committee to resolve various issues with respect to the final order approving the Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement (the "DIP Credit Agreement").

9. Contemporaneously with filing this motion, the Debtors have filed the Second Amendment to Senior Secured, Super-Priority, Debtor-in-Possession Credit Agreement (the "Second Amendment to DIP Credit Agreement").

10. As set forth in the Second Amendment to DIP Credit Agreement, and as a result of the negotiations between the DIP Lenders and the Creditors' Committee, the Borrowers have agreed to take certain actions contained in a side letter agreement dated December 19, 2008 (the "DIP Side Letter Agreement").

RELIEF REQUESTED

11. By this Motion, the Debtors respectfully request entry of an order pursuant to section 107(b) and Bankruptcy Rule 9018 granting the Debtors leave to file the DIP Side Letter Agreement under seal.

BASIS FOR RELIEF

12. Section 107(b) of the Bankruptcy Code authorizes the Court to issue orders to protect entities from potential

harm caused by the disclosure of confidential information.

In particular, section 107(b) provides that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information.

. . . .

11 U.S.C. § 107(b)(1).

13. In addition, pursuant to Rule 9018 of the Federal Rules of Bankruptcy Procedure:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information

FED. R. BANKR. P. 9018.

14. In granting relief under section 107(b) of the Bankruptcy Code, "[t]he court determines whether the subject documents falls within the provisions § 107(b) and the appropriate remedy if they do." In re Barney's, Inc., 201 B.R. 703, 707 (Bankr. S.D.N.Y. 1996). If the documents in question fall within the parameters of section 107(b), "the court is *required* to protect a requesting interested party and has no discretion to deny the application." In re Orion

Pictures Corp., 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original); see also In re Lomas Fin. Corp., 1991 WL 21231, at *2 (S.D.N.Y. Feb. 11, 1991) (noting the broad scope of the term "commercial information"). Public access to the confidential record should be denied if "closure is essential to preserve higher values and is narrowly tailored to serve that interest." In re Washington Post Co., 807 F.2d 383, 390 (4th Cir. 1986) (quoting Press-Enterprise I, 464 U.S. 501, 510 (1984)); see also In re Nunn, 49 B.R. 963, 965 (Bankr. E.D. Va. 1985) (sealing customer list because allowing "a competitor access to [creditor's] customer list would obviously have an adverse effect on [creditor]").

15. Due to the confidential and sensitive nature of the terms contained in the DIP Side Letter Agreement, the Debtors respectfully submit that good cause exists for the relief requested. No alternative method would adequately protect the confidential and proprietary information contained in the DIP Side Letter Agreement.

16. The Debtors will deliver copies of the DIP Side Letter Agreement to chambers for in camera review by the Court and to the Office of the United States Trustee for the Eastern District of Virginia. The DIP Lenders are parties to the DIP Side Letter Agreement and the Creditors'

Committee has been provided a copy contemporaneous with the filing of this Motion.

17. Notice of this Motion will be given to: (i) the Office of the United States Trustee for the Eastern District of Virginia; (ii) counsel to the agent for DIP Lenders; (iii) counsel to Creditors' Committee; and (iv) the Debtors' top fifty (50) largest unsecured creditors on a consolidated basis. The Debtors submit that, under the circumstances, no other or further notice of the Motion is required.

WAIVER OF MEMORANDUM OF LAW

18. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Debtors request that the requirement that all motions be accompanied by a separate memorandum of law be waived.

NO PRIOR REQUEST

19. No previous motion for the relief sought herein has been made to this or any other Court.

CONCLUSION

WHEREFORE the Debtors respectfully request that the Court enter an order substantially in the form of Exhibit A hereto and grant the Debtors such other and further relief as is just.

Dated: December 22, 2008
Richmond, Virginia

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM, LLP
Gregg M. Galardi, Esq.
Ian S. Fredericks, Esq.
P.O. Box 636
Wilmington, Delaware 19899-0636
(302) 651-3000

- and -

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM, LLP
Chris L. Dickerson, Esq.
333 West Wacker Drive
Chicago, Illinois 60606
(312) 407-0700

- and -

MCGUIREWOODS LLP

/s/ Douglas M. Foley .
Dion W. Hayes (VSB No. 34304)
Douglas M. Foley (VSB No. 34364)
One James Center
901 E. Cary Street
Richmond, Virginia 23219
(804) 775-1000

*Proposed Counsel for Debtors
and Debtors in Possession*

EXHIBIT A

Gregg M. Galardi, Esq.
Ian S. Fredericks, Esq.
SKADDEN, ARPS, SLATE, MEAGHER & FLOM,
LLP
One Rodney Square
PO Box 636
Wilmington, Delaware 19899-0636
(302) 651-3000

Dion W. Hayes (VSB No. 34304)
Douglas M. Foley (VSB No. 34364)
MCGUIREWOODS LLP
One James Center
901 E. Cary Street
Richmond, Virginia 23219
(804) 775-1000

- and -

Chris L. Dickerson, Esq.
SKADDEN, ARPS, SLATE, MEAGHER & FLOM,
LLP
333 West Wacker Drive
Chicago, Illinois 60606
(312) 407-0700

*Counsel to the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

| | | |
|----------------------------|---|----------------------|
| In re: |) | Chapter 11 |
| |) | |
| CIRCUIT CITY STORES, INC., |) | Case No. 08-35653 |
| <u>et al.</u> , |) | |
| |) | |
| |) | Jointly Administered |
| Debtors. |) | |
| |) | |

**ORDER AUTHORIZING DEBTORS TO FILE
CERTAIN DOCUMENTS UNDER SEAL**

Upon the motion (the "Motion")¹ of the Debtors for an Order, pursuant to section 107(b)(1) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure,

¹ Capitalized terms used herein shall have the meanings ascribed to such terms in the Motion.

wherein the Debtors requested authority to file certain documents under seal; and the Court having reviewed the Motion and the Besanko Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby,

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED.
2. The Debtors are authorized to file the DIP Side Letter Agreement under seal and provide copies of the DIP Side Letter Agreement to Chambers for in camera review, and to the Office of the United States Trustee for the Eastern District of Virginia.
3. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

Dated: Richmond, Virginia
December __, 2008

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Gregg M. Galardi, Esq.
Ian S. Fredericks, Esq.
SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
One Rodney Square
PO Box 636
Wilmington, Delaware 19899-0636
(302) 651-3000

- and -

Chris L. Dickerson, Esq.
SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
333 West Wacker Drive
Chicago, Illinois 60606
(312) 407-0700

- and -

/s/ Douglas M. Foley
Dion W. Hayes (VSB No. 34304)
Douglas M. Foley (VSB No. 34364)
MCGUIREWOODS LLP
One James Center
901 E. Cary Street
Richmond, Virginia 23219
(804) 775-1000

*Counsel to the Debtors
and Debtors in Possession*

CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley
Douglas M. Foley